IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22373 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IRSHADMOHAMMED MAJIDBHAI SHAIKH
Versus
COMMISSIONER OF POLICE AND OTHERS

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Appearance :
MR CHETAN B RAVAL for Petitioner.
RULE SERVED BY DS for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenue has challenged detention order dated 20-10-2005. By the said order, the petitioner is detained under the provisions of Prevention of Anti Social Activities Act (“PASA” for short) as a “bootlegger”. Along with the order of detention,

petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference of one criminal case being Gunah Register No.81/2005 pending against the petitioner. The aforesaid case is registered under Section 66 (B), 65-A-E, 116 (B) and Section 81 of the Bombay Prohibition Act, as certain quantity of English liquor of different brands was found from the vehicle of the petitioner.

In the detention order, it is mentioned that the petitioner is in judicial custody but it is also mentioned that the petitioner may be released on bail at any point of time. In the detention order it is also mentioned that activities of the petitioner are prejudicial to public health. Learned advocate for the petitioner submitted that the petitioner was found to be in possession of English liquor, which may be said to be the breach of law and order but it cannot be said that it is prejudicial to public health. It is submitted by him the criminal case is already registered against the petitioner under the Criminal Law and he is already in judicial custody and, therefore, also it is not necessary to detain the petitioner under PASA. He further submitted that it cannot be said that the activity of the petitioner is prejudicial to public health, simply because the petitioner was in possession of English liquor. He further submitted that it cannot be said that consumption of English liquor affects the public health unless there is some material on record in this behalf. It is submitted by him that the authority has not applied its mind properly and came to the conclusion that the activity of the petitioner is prejudicial to public health, even though there is no material on record in this behalf. In order to substantiate his say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation."

Mr.N.D.Gohil, learned AGP is not in a position to substantiate his say that aforesaid activities of the petitioner are prejudicial to public health.

It is also required to be noted that in the detention order it is not stated as to how the activity of the petitioner is prejudicial to public health. It can be said that, by committing an offence under the Prohibition Act, the petitioner has violated the law and order but it cannot be said that by possessing or selling the liquor the petitioner has violated public order.

Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activity of the petitioner is prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the activity of the petitioner is prejudicial to public health, therefore, the impugned order of detention is required to be quashed and set aside.

For the foregoing reasons, this petition is allowed. Order of detention passed against the petitioner dated 20-10-2005 is quashed and set aside. Petitioner-Irshadmohammed Majidbhai Shaikh is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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